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Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador*

1. The Committee on Economic, Social and Cultural Rights considered the combined third, fourth and fifth periodic reports of El Salvador on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/SLV/3-5) at its 25th and 26th meetings, held on 14 May 2014 (E/C.12/2014/SR.25 and 26), and adopted the following concluding observations at its 40th meeting, held on 23 May 2014.

A. Introduction

2. The Committee welcomes the combined third, fourth and fifth periodic reports of El Salvador and the written replies to its list of issues (E/C.12/SLV/Q/3-5/Add.1), although it regrets their late submission and the failure to reply to some of the questions. The Committee notes the State party delegation's positive attitude to the Committee and is grateful to have received the additional information promised during the dialogue.

B. Positive aspects

3. The Committee warmly welcomes the ratification by the State party of the Optional Protocol to the Covenant and its recognition of the Committee's competence to conduct enquiries under article 11 of the Optional Protocol.

4. The Committee also acknowledges the State party's ratification of other international instruments:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2014;

(b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2007.

5. The Committee welcomes the start of the procedure to incorporate the right to water and the right to food, and recognition of the indigenous peoples, in the Constitution. It also welcomes the adoption of the following laws:

* Adopted by the Committee at its fifty-second session (28 April–23 May 2014).

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(a) The Special Act on a Violence-Free Life for Women (2012);

(b) The Act on Equality, Fairness and the Elimination of Discrimination against Women (2011); and

(c) The Child and Adolescent Protection Act (2009).

6. The Committee notes with appreciation that the State party has made great progress since the previous interactive dialogue with the Committee in 2006, and acknowledges its desire to make human rights and social inclusion a key component of its policies. In particular, the Committee welcomes:

(a) The drafting of a National Policy for the Comprehensive Protection of Children and Adolescents (2013);

(b) The creation of a National Council on Trafficking in Persons (2012); and

(c) The establishment of a National Plan for Equality and Equity for Salvadoran Women, 2012–2017.

C. Principal subjects of concern and recommendations

Right of self-determination

7. The Committee welcomes the Legislative Assembly's adoption, in April 2012, of a constitutional amendment giving legal recognition to the indigenous peoples, although it has not yet been ratified. The Committee is concerned that the number of indigenous persons in the State party is not known and that the latest censuses give imprecise figures that are based on inappropriate questions (arts. 1 and 2).

The Committee urges the State party to reinforce its action to guarantee the effective enjoyment of economic, social and cultural rights by the indigenous peoples. The Committee recommends that parliament complete the process of ratification of the amendment to the Constitution giving legal and political recognition to the indigenous peoples. It also urges the State party to conduct an updated census of the indigenous population.

Allocation of public funds

8. The Committee notes with appreciation the tax reforms carried out by the State party. It is nevertheless concerned that tax revenue in the State party remains low, which has a negative effect on national income and may restrict the resources available for economic, social and cultural rights (art. 2).

The Committee encourages the State party to continue developing a satisfactory, socially fair, tax policy that will boost revenue and make it possible to increase the resources available for the implementation of economic, social and cultural rights. The Committee also recommends that the tax reform and resource allocation planning should be carried out in a transparent and participatory fashion.

Persons with disabilities

9. The Committee regrets that the fine for failure to meet the quota set for hiring of persons with disabilities is low and does not guarantee compliance with the regulations. The Committee is also concerned at the cultural barriers and prejudices that bar persons with disabilities from access to the labour market and regrets the lack of occupational training for persons with disabilities.

The Committee recommends that the State party devise a public policy to promote training, including vocational and advanced training, for persons with disabilities, and their integration in the labour market. It also recommends that the State party ensure compliance with the statutory quota for hiring persons with disabilities and reinforce its measures for monitoring and certifying compliance with the law.

Equality between men and women in the right to work

10. Notwithstanding the adoption of the Act on Equality, Fairness and the Elimination of Discrimination against Women in 2011, the Committee is concerned at the persistence of certain stereotypes that prevent women from enjoying the right to work on equal terms with men. The Committee remains concerned at the smaller proportion of women in decision-making positions, in both the public and the private sectors (E/C.12/SLV/CO/2, para. 28) (arts. 3 and 6).

The Committee recommends that the State party redouble its efforts to combat gender stereotypes in the family and society. It also recommends that the State party promote the equal representation of men and women in decision-making positions in the public and the private sectors, including through special temporary measures. The Committee also recommends that men and women are made aware of the right to equal career opportunities.

Unemployment and the informal labour market

11. The Committee notes with concern the high level of unemployment in the formal labour market and the large number of workers employed in the informal sector with no basic labour standards or social protection (arts. 2 and 6).

The Committee urges the State party to step up its efforts to increase opportunities in the formal labour market and to take the necessary measures to ensure that workers in the informal economy enjoy basic labour and social protection standards.

Equitable and equal pay for work of equal value

12. The Committee once again notes that, despite efforts in that regard, the gap between men's and women's wages is still large, which contravenes the principle of equal pay for work of equal value enshrined in the Covenant (E/C.12/SLV/CO/2, para. 28) (arts. 3 and 7).

The Committee recommends that the State party guarantee equal pay for men and women for work of equal value, as provided in article 7 (a) (i) of the Covenant. It also recommends that the State party promote training, continue to educate men and women about equal career opportunities with a view to promoting their pursuit of education and training in fields other than those traditionally dominated by either sex, and take specific measures to promote women's advancement in the labour market.

Fair and equitable pay

13. The Committee repeats its concern about the minimum wages set by the State party, which are not sufficient to guarantee a decent standard of living (E/C.12/SLV/CO/2, paras. 12 and 30). The Committee regrets the disparities between the minimum wages for the various sectors of economic activity, notably the agricultural and the textile *maquila* sectors, and that the periodic reviews of minimum wage levels are often formal exercises that do not guarantee that all workers and their families will enjoy a decent standard of living (arts. 6 and 7).

The Committee urges the State party to ensure that the minimum wage provides a decent standard of living. It also recommends that the State party ensure that its

periodic review complies with the provisions of article 7 (a) (ii) of the Covenant and article 38, paragraph 2, of the Constitution.

Right to strike

14. The Committee repeats its concern at the restrictions on the right to strike and the fact that many strikes are ruled illegal by the State party's courts. It also regrets that it did not receive accurate, up-to-date information on the number of strikes declared illegal between 2010 and 2014 and the grounds for those rulings (art. 8).

The Committee recommends that the State party take the necessary steps to ensure that all workers can exercise their right to strike, as provided in article 8 of the Covenant. It also asks that the State party provide in its next periodic report detailed, disaggregated statistics on the number of strikes declared illegal by the State party's courts and the grounds for those rulings.

Social security

15. Notwithstanding the Committee's previous recommendation (E/C.12/SLV/CO/2, para. 33) and the provisions of the Five-Year Development Plan 2010–2014, the Committee notes with concern that the State party has still not introduced a universal social security system. The Committee particularly regrets that there is no social security for agricultural workers or domestic workers (art. 9).

The Committee recommends that the State party conduct an evaluation of its social security system with a view to establishing the mechanisms necessary to guarantee broad coverage providing proper social benefits for all workers, including agricultural and domestic workers, taking account of the Committee's general comment No. 19 (2008), on the right to social security (art. 9 of the Covenant) and International Labour Organization (ILO) recommendation No. 202, the Social Protection Floors Recommendation, 2012.

Child labour and street children

16. The Committee repeats its concern at the persistence of child labour in the State party, notably in domestic service (E/C.12/SLV/CO/2, paras. 23 and 42). It is also concerned at reports of large numbers of children working in hazardous jobs. The Committee notes with concern that poverty among families in rural areas and limited access to secondary education increase the risk of child labour. The Committee is also concerned at the lack of information on street children (art. 10).

The Committee encourages the State party to redouble its efforts to combat child labour and the problem of street children by means of an emergency plan. It urges the State party to conduct systematic labour inspections and to implement public policies aimed at reducing the vulnerability of children in rural and urban areas and promoting full access to secondary schooling. The Committee asks that the State party provide in its next periodic report information on the prosecution of child labour offences.

Gender-based violence

17. The Committee notes with concern the problem of gender-based violence, and particularly domestic violence, although it takes note of the State party's strategy to prevent violence against women (art. 10).

The Committee urges the State party to reduce the levels of gender-based violence and strengthen the measures to combat it, including by applying the law effectively,

prosecuting offences more forcefully and conducting awareness-raising and education campaigns for the general public.

Right to housing

18. Despite the measures taken by the State party, the Committee notes with concern the inadequacy of the budget allocated to housing and the extreme shortage of social housing units, particularly in rural areas. The Committee is concerned at the possible adverse effects of the Special Act to Guarantee Ownership or Legal Possession of Real Property (2009), inasmuch as it establishes a fast-track procedure to evict anyone not in possession of title to a property. The Committee is also concerned at the lack of water and sanitation services, particularly in rural areas (art. 11).

The Committee recommends that the State party allocate sufficient resources to the implementation of programmes aimed at granting security of tenure, including access to credit and housing subsidies for low-income families and marginalized and disadvantaged groups, taking into account general comment No. 4 (1991), on the right to adequate housing (Covenant, art. 11, para. 1). It also recommends that the State party adopt legislation on forced eviction that is in line with international standards and guidelines, including general comment No. 7 (1997), on the right to adequate housing: forced evictions (Covenant, art. 11, para. 1). The Committee urges the State party to provide water and sanitation services to existing dwellings. The Committee asks the State party to provide information on the number of homeless persons in the State party in its next periodic report.

Poverty

19. The Committee notes that, although the national poverty index has gone down, the percentage of the population living in poverty remains high and the disparity between poverty levels in rural and urban areas is still alarming. The Committee repeats its concern at the highly unequal distribution of wealth in the State party (E/C.12/SLV/CO/2, paras. 17 and 35) (art. 11).

The Committee recommends that, in its anti-poverty programmes, the State party devote due attention to the differentials and shortfalls between urban and rural areas. The Committee recommends that the State party continue to strive to fulfil its commitments with respect to the Millennium Development Goals. It also recommends that the State party step up its measures to combat poverty and extreme poverty among the indigenous communities and monitor progress in this regard by, inter alia, compiling disaggregated statistical data.

Malnutrition and the right to food

20. The Committee welcomes with satisfaction the adoption in 2012 of constitutional amendments incorporating the right to food and access to water, yet to be ratified. The Committee notes with deep concern that child malnutrition persists and has reached 20 per cent, an unacceptable level (art. 11).

The Committee recommends that Parliament complete ratification of the constitutional amendments guaranteeing the right to food and access to water in the Constitution. It also urges the State party to step up its efforts to prevent and combat child malnutrition, in particular among children in rural and remote areas.

Right to health

21. The Committee reiterates its concern that the budget for health is still not sufficient to provide adequate coverage for all sectors of the population, in particular vulnerable

groups (E/C.12/SLV/CO/2, para. 24). The Committee notes with interest the special health and maternity scheme for domestic workers, set up in 2010 (Executive Decree No. 74), but regrets that this is a voluntary scheme and does not cover other persons working in the informal sector (art. 12).

The Committee recommends that the State party increase the health-care budget and take the necessary measures to consolidate a national health system accessible to all without discrimination, in accordance with article 12 of the Covenant and taking into account general comment No. 14 (2000), on the right to the highest attainable standard of health (Covenant, art. 12). The Committee asks that the State party provide detailed and up-to-date information in its next report, including disaggregated statistical data and indicators showing progress achieved in this area.

Abortion

22. The Committee reiterates its concern at the continuing complete ban on abortion, which affects poor and less educated women in particular, with no allowance for exceptional circumstances, which has given rise to grave situations of distress and injustice (E/C.12/SLV/CO/2, paras. 25 and 44). The Committee is particularly concerned at cases in which women whose health was seriously at risk have turned to the health system and been reported on suspicion of having had an abortion. In some cases disproportionate criminal penalties have been imposed with no regard for due process. The Committee is also concerned at the high number of unsafe and illegal abortions, which have serious consequences for health and are still one of the main causes of maternal mortality (art. 12).

The Committee urges the State party to revise its legislation on the total prohibition of abortion to make it compatible with other fundamental rights such as the woman's right to health and life, and consistent with the dignity of women. The Committee urges the State party to provide quality treatment for complications arising from abortions carried out in unsafe conditions, rather than focusing on criminal prosecution.

Sexual and reproductive health

23. Notwithstanding the State party's efforts, the Committee is concerned at the scarcity and inadequacy of sexual and reproductive health services, particularly for girls and women, which, despite certain improvements, continues to give rise to high maternal mortality and teenage pregnancy rates (art. 12).

The Committee recommends that the State party redouble its efforts to bring down the high rate of teenage pregnancies and ensure the accessibility and availability of sexual and reproductive health services, particularly in rural areas. It also recommends that the State party expand and reinforce comprehensive and age-appropriate sexual and reproductive health education for both sexes in the primary and the secondary curricula, and introduce education and awareness-raising programmes for the public at large.

Quality of education and education budget

24. Notwithstanding the increases in the education budget, the Committee notes with concern that it is still inadequate. The Committee is particularly concerned at the differences in quality and infrastructure between schools in urban and rural areas, low teachers' pay and poor teacher training (art. 13).

The Committee recommends that the State party guarantee the resources necessary to ensure adequate quality and infrastructure in schools in rural and urban areas. It also

recommends that the State party improve teachers' material conditions and pay and teacher training.

School dropout rates

25. Notwithstanding the State party's efforts, the Committee is concerned at the high dropout rates in primary education, particularly among girls in rural areas. In addition, despite the progress made, the Committee notes with concern the high illiteracy rate, primarily in rural areas and among the indigenous communities, in particular among girls and women (arts. 13 and 14).

The Committee recommends that the State party pursue its literacy plan, redoubling its efforts in rural areas and among the indigenous communities. It encourages the State party to develop special programmes to prevent children dropping out of school and to deal with the root causes.

Bilingual intercultural education

26. The Committee notes with concern that the indigenous communities do not always enjoy the right to education in an indigenous language. The Committee is also concerned at the restrictions on access to and retention in secondary and higher education, particularly among indigenous adolescents and young people (arts. 13 and 14).

The Committee recommends that the State party adopt effective measures to guarantee the indigenous peoples access to intercultural education in their own languages, and that it ensure that it meets the specific needs of those peoples. The Committee urges the State party to take urgent steps to preserve the indigenous languages and encourage their use.

Right to land and natural resources

27. The Committee is concerned that the State party has no legal mechanism for recognizing the right of the indigenous peoples as such to acquire collective title to land. It is also concerned that there is no systematic procedure for effective consultation and obtaining the indigenous peoples' free, prior and informed consent in decisions concerning the exploitation of natural resources in their ancestral lands. The Committee is particularly concerned that ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries has still not been ratified (arts. 1, 2 and 15).

The Committee recommends that the State party create mechanisms for recognizing the indigenous peoples' rights to their ancestral lands and natural resources. The Committee also urges the State party to engage in consultations regarding mining and hydrocarbon resource exploration and development that allow the peoples concerned to give their free consent. It also recommends that the State party expedite its accession to ILO Convention No. 169, and encourages the State party to step up its efforts to promote and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

Right to enjoy the benefits of scientific progress

28. The Committee is concerned that scientific attempts to determine the causes of chronic kidney disease of unknown cause (CKDu), which has caused more than 5,000 deaths in the State party, notably among agricultural workers in the sugar cane sector, have as yet proved inadequate and have yielded no satisfactory results (art. 15, para. 1 (b)).

The Committee urges the State party to work with neighbouring countries, international bodies and international cooperation and increase the scientific

resources needed to carry out independent research into this condition and its causes and then to use that knowledge to prevent and cure it, thereby enabling those affected to enjoy the benefits of scientific progress.

D. Other recommendations

29. **The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among the indigenous peoples, State officials, the judiciary and legislature, lawyers and civil society organizations, and inform the Committee of the steps taken to implement them in its next periodic report. It also encourages the State party to engage civil society organizations in the process of discussion at the national level before submission of its next periodic report.**

30. **The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting to the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.6, chap. I).**

32. **The Committee asks the State party to submit its sixth periodic report in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 30 May 2019.**